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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with Assembly resolution 53/139 of 9 December 1998.

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Annex

Report on torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 53/139

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I. Introduction

1. The present report has been submitted by the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 53/139 and resolution 1999/32 of the Commission on Human Rights. It is the first written report to be submitted to the General Assembly[1] since the forty-first session of the Commission on Human Rights, at which the Commission adopted resolution 1985/33, in which it decided to appoint a special rapporteur to examine questions relevant to torture.

2. The Special Rapporteur, Sir Nigel Rodley, was appointed by the Chairman of the Commission on Human Rights in 1993, pursuant to resolution 1993/40, when his predecessor, Peter Kooijmans, resigned. The Special Rapporteur has subsequently presented six annual reports to the Commission on Human Rights; his predecessor presented eight annual reports to the Commission on Human Rights.

3. The present report covers the period from 15 December 1992 to 31 August 1999, the period reported on by the present Special Rapporteur. The period from 1985 to 1992 is summarized in paragraphs 4 to 6 below. In chapter II, the Special Rapporteur provides an interpretation of the mandate entrusted to him and the legal framework in which it has been implemented. Chapter III covers the methods of work and the activities undertaken since 1993. Chapter IV presents issues of special concern to the Special Rapporteur. Finally, chapter V contains the Special Rapporteur's concluding remarks and recommendations.

II. Mandate

A. History

4. At its forty-first session, the Commission on Human Rights adopted resolution 1985/33, in which it decided to appoint a special rapporteur to examine questions relevant to torture, requesting him to seek and receive credible and reliable information on such questions and to respond to that information without delay. The mandate was subsequently renewed by the Commission in 1986, 1987, 1988, 1990, in resolution 1992/32 (when the Commission extended the mandate for a period of three years), in 1995 and 1998.

5. Pursuant to this mandate, the Special Rapporteur established contact with Governments requesting information on the legislative and administrative measures taken to prevent torture and to remedy its consequences whenever it occurs. Further, the provision of the mandate calling upon him to respond effectively to the credible and reliable information that comes before him led to the urgent action procedure by which the Special Rapporteur requests assurances from the concerned Government to ensure protection of the individual's right to physical and mental integrity.

B. Terms of reference

6. The Special Rapporteur has followed the principle of continuity in the discharge of the mandate conferred on him pursuant to resolutions of the Commission on Human Rights. Thus, his work is characterized by the following main types of activity:

(a) Seeking and receiving credible and reliable information from Governments, the specialized agencies and non-governmental organizations;

(b) Making urgent appeals to Governments to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the Special Rapporteur's mandate might occur or be occurring;[2]

(c) Transmitting to Governments information of the sort mentioned in (a) above indicating that acts falling within his mandate may have occurred or that legal or administrative measures are needed to prevent the occurrence of such acts;

(d) Carrying out visits *in situ* with the consent of the Government concerned.

7. In addition to the resolutions renewing his mandate (1986/50, 1987/29, 1990/34, 1992/32, 1995/37 B and 1998/38), several resolutions adopted or reaffirmed by the Commission on Human Rights at its fifty-fifth session are also pertinent within the framework of the mandate and have been taken into consideration by the Special Rapporteur in examining and analysing the information brought to his attention. These resolutions are, in particular: 1999/27, entitled "Human rights and terrorism"; 1999/30, "Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"; 1999/31, "Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers"; 1999/33, "The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms"; 1999/34, "Impunity"; 1999/35, "Extrajudicial, summary or arbitrary executions"; 1999/36, "Right to freedom of opinion and expression";

1999/37, "Question of arbitrary detention"; 1999/38, "Question of enforced or involuntary disappearances"; 1999/39, "Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief"; 1999/41, "Integrating the human rights of women throughout the United Nations system"; 1999/42, "Elimination of violence against women"; 1999/43, "Abduction of children from northern Uganda"; 1999/47, "Internally displaced persons"; 1999/48, "Rights of persons belonging to national or ethnic, religious and linguistic minorities"; 1999/66, "Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms"; 1999/74, "Assistance to States in strengthening the rule of law"; 1999/78, "Racism, racial discrimination, xenophobia and related intolerance"; 1999/80, "Rights of the child".

C. Legal framework

8. The Special Rapporteur is guided by international legal standards. The main substantive legal framework, as indicated by the Commission on Human Rights in its resolution 1999/32, consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Relevant provisions of other international human rights instruments such as the Convention on the Rights of the Child, the Vienna Declaration and Programme of Action, the Declaration on the Elimination of All Forms of Violence against Women, the four Geneva Conventions of 1949 for the protection of war victims, the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Treatment of Prisoners, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are also taken into consideration by the Special Rapporteur.

9. The right to be free from torture and cruel, inhuman or degrading treatment or punishment is a non-derogable right, the protection of which is explicitly affirmed in article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, the Declaration of All Persons from Being Subjected to Torture and Other Cruel, Inhuman Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

10. In accordance with article 2 of the Universal Declaration of Human Rights and articles 2 and 26 of the International Covenant on Civil and Political Rights, and pursuant to several other United Nations declarations and conventions, everyone is entitled to this right without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of this right.

11. Moreover, article 4, paragraph 2, of the International Covenant on Civil and Political Rights provides that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person.

12. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establish other legal obligations to prevent torture and other cruel, inhuman or degrading treatment. These legal obligations, which the Special Rapporteur takes into consideration when he communicates with a State or undertakes an *in situ* visit, include the following:

(a) Each State shall ensure that acts of torture are offences under its criminal law;

(b) Any person who alleges that he or she has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned;

(c) If an investigation establishes that an act of torture appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with the national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings;

(d) Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has

been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law;

(e) Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings;

(f) No State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

III. Methods of work and other activities since 1993

13. The Special Rapporteur discharges his mandate mainly on the basis of information brought to his attention by non-governmental organizations, Governments, individuals and intergovernmental organizations. These communications contain specific cases of alleged torture and cruel, inhuman or degrading treatment or punishment and general information about questions related to torture.

14. While many of the organizations and individuals providing allegations are well known to the Special Rapporteur and other United Nations human rights officials as sources of credible information, sometimes allegations are received from less well-known or entirely new sources. The main criteria applied by the Special Rapporteur in the evaluation of such allegations are the degree of detail they contain concerning the victims and the precise circumstances of the given incident. Where doubt persists, the Special Rapporteur will seek corroboration of these allegations from other sources of undisputed credibility. The way in which the sources of allegations respond to the Special Rapporteur's requests for comments on the contents of government replies and/or for additional details to clarify the cases they submitted will provide the Special Rapporteur with a basis for assessing the reliability of the sources. Where the information is considered to be credible, the Special Rapporteur transmits the allegations to the Governments concerned, either in the form of an urgent appeal or a letter.

A. Letters of general allegation

15. In the first report submitted by the Special Rapporteur to the fiftieth session of the Commission on Human Rights, he reported that it was only possible to send one letter to Governments transmitting information alleging violations of the prohibition of treatment within the Special Rapporteur's mandate, regardless of the incidence and quality of the information addressed to the Special Rapporteur. At the time he noted that this was an unfortunate situation: first, because it is desirable for Governments to be in possession of relevant information as expeditiously as possible; and second, because when information is transmitted later in the year, little time is left for the receipt of a response that can be reflected in the Special Rapporteur's report for the year in question. This leads to even an initial exchange of correspondence being spread across more than one report. This, in turn, makes it difficult for a reader to obtain a properly balanced perspective concerning the original allegations or to assess the significance of any later governmental response. Moreover, much information that arrives after the transmittal of a letter to a Government must then wait until the following year before being transmitted to that Government. Further, if any response from a Government seems to the Special Rapporteur to warrant elucidation, he is only in a position to seek that elucidation within the context of the next letter of transmittal of information (see E/CN.4/1994/31, paras. 9 and 10). Regrettably, the limited resources of the Office of the United Nations High Commissioner for Human Rights continue to dictate that only one letter can be transmitted each year to Governments.

16. Between December 1993 and 10 December 1998, the Special Rapporteur transmitted 330 letters, involving approximately 3,357 individuals, as well as 34 groups involving approximately 905 individuals.

17. Since December 1993, letters have been transmitted to the following 127 countries: Afghanistan, Algeria, Albania, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Belgium, Bhutan, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo (former Zaire), Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Guinea-Bissau, Ethiopia, France, Gambia, Georgia, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic,

Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe. The Special Rapporteur has also transmitted information to the Palestinian Authority.

B. Urgent appeals

18. An urgent appeal is made on the basis of information received by the Special Rapporteur expressing concern about the fact that a person is at risk of being subjected to torture. Such concern may be based, *inter alia*, on accounts by witnesses of the person's physical condition while in detention, or on the fact that the person is kept incommunicado, a situation which may be conducive to torture. The Special Rapporteur, when making a determination as to whether there are reasonable grounds to believe that an identifiable risk of torture exists, takes into account a number of factors, any one of which may be sufficient, though generally more than one will be present. These factors include: (a) the previous reliability of the source of the information; (b) the internal consistency of the information; (c) the consistency of the information with information on other cases from the country in question that has come to the Special Rapporteur's attention; (d) the existence of authoritative reports of practices of torture from national sources, such as official commissions of inquiry; (e) the findings of other international bodies, such as those established in the framework of the United Nations human rights machinery; (f) the existence of national legislation, such as that permitting prolonged incommunicado detention, that can have the effect of facilitating torture; and (g) the threat of extradition or deportation, directly or indirectly, to a State or territory where one or more of the above elements are present.

19. The urgent appeal procedure is not per se accusatory, but essentially preventive in nature and purpose. The Government concerned is merely requested to look into the matter and to take steps aimed at protecting the right to physical and mental integrity of the person concerned, in accordance with the international human rights standards.

20. In view of the fact that the urgent appeal contains information that is extremely time-sensitive, the appeal is addressed directly to the Ministry for Foreign Affairs or relevant department of the country concerned.

21. The Special Rapporteur, where appropriate, sends urgent appeals jointly with other organs of the United Nations human rights machinery.

22. Between December 1993 and 10 December 1998, the Special Rapporteur transmitted 712 urgent appeals on behalf of approximately 2,959 individuals and 44 groups involving 2,280 individuals. During the period under review, from 10 December 1998 to 31 August 1999, the Special Rapporteur transmitted 113 urgent actions to 41 countries.

23. The Special Rapporteur has sought to cooperate with holders of other Commission mandates to avoid duplication of activity in respect of country-specific initiatives. Thus, he has sent urgent appeals or transmitted information alleging violations within his mandate to Governments jointly with the following mechanisms: the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention, and the Special Rapporteurs on extrajudicial, summary or arbitrary executions; the independence of judges and lawyers; freedom of opinion and expression; violence against women; the Sudan; the Democratic Republic of the Congo; Nigeria; Burundi; the Islamic Republic of Iran; Afghanistan; Myanmar.

24. Since December 1993, urgent appeals were transmitted to the following 83 countries: Algeria, Bahamas, Bahrain, Bangladesh, Belgium, Bhutan, Bolivia, Brazil, Bulgaria, Cameroon, Canada, Chad, Chile, China, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo (former Zaire), Denmark, Djibouti, Ecuador, Egypt, Equatorial Guinea, Ethiopia, Gambia, Georgia, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Myanmar, Namibia, Nepal, Niger, Nigeria, Pakistan, Norway, Peru, Qatar, Republic of Korea, Russian Federation, Rwanda, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia and

Zimbabwe. The Special Rapporteur has also transmitted urgent actions to the Palestinian Authority.

C. Government replies and follow-up communications

25. In its annual resolution on the question of torture and other cruel, inhuman or degrading treatment or punishment, the Commission on Human Rights has continuously called upon all Governments to cooperate with and assist the Special Rapporteur on the question of torture, to supply all necessary information requested by him and to react appropriately and expeditiously to his urgent appeals. While many Governments have replied in an expeditious manner to his communications, many others have failed to do so. The table below shows the number of Governments that have replied to the communications.

Year	*Number of Governments to which urgent appeals and/or cases were transmitted*	*Number of Governments that provided replies*
1994	42	20
1995	53	34
1996	48	41
1997	61	42
1998	45	28
1999	59	35

26. The Special Rapporteur analyses responses from Governments and then transmits the contents to the sources of the allegations, as appropriate, for comment. If required, dialogue with the Government is then pursued further.

D. Visits

27. The Special Rapporteur does not, as a rule, seek to visit a country in respect of which the United Nations has established a country-specific mechanism such as a special rapporteur on the country, unless a joint visit seems to both to be indicated. As regards countries where the mandate of other thematic mechanisms may also be affected, he seeks consultation with them with a view to exploring with the Government in question, either jointly or in parallel, the possibility of a joint visit. Similarly, where the Committee against Torture is considering the situation in a country under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, especially if that consideration involves a visit or possible visit to the country in question, the Special Rapporteur does not seek a visit.

28. The Special Rapporteur carries out visits to countries on invitation, but also takes the initiative of approaching Governments with a view to carrying out visits to countries concerning which he has received information indicating the existence of a significant incidence of torture. Such visits allow the Special Rapporteur to gain more direct knowledge of cases and situations falling within his mandate, and are intended to enhance the dialogue between the Special Rapporteur and the authorities most directly concerned, as well as with the alleged victims, their families and their representatives and concerned non-governmental organizations. The visits also allow the Special Rapporteur to address detailed communications to Governments.

29. With regard to countries in which visits have been carried out, the Special Rapporteur periodically reminds the Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them and the steps taken for their implementation, or the constraints which might have prevented their implementation.

30. Since he has taken up his mandate as Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur has conducted visits to Rwanda (1994), the Russian Federation (1994), Colombia (1994), Chile (1995), Venezuela (1996), Pakistan (1996), Mexico (1997), Turkey (1998), Romania (1999) and Cameroon (1999). The visit to Colombia was undertaken with the Special Rapporteur on extrajudicial, summary or arbitrary executions. In response to a request by the Special Rapporteur on the situation of human rights in Rwanda, the Special Rapporteur accompanied the latter on his first visit to Rwanda from 10 to 20 June 1994. At the time of writing the present report, the Special Rapporteur was also scheduled to undertake a visit to Kenya in September 1999, and the Government of China had agreed to a visit in the first part of 2000. Initial positive reactions from the Permanent Missions of Algeria and Egypt to the United Nations Office at Geneva to his requests for invitations to visit their countries did not yield the hoped-for invitations. His request for invitations to visit India, Indonesia, Bahrain, Brazil and Tunisia remain without positive response.

E. Other activities

31. In its resolutions, the Commission on Human Rights has considered it desirable that the Special Rapporteur continue to exchange views with the relevant human rights mechanisms and bodies, especially the Committee against Torture and the Office of the United Nations High Commissioner for Human Rights, in particular with a view to enhancing further their effectiveness and mutual cooperation while avoiding unnecessary duplication with other special procedures, and that he should pursue cooperation with relevant United Nations programmes, notably that on crime prevention and criminal justice (see, for example, resolution 1999/32, para. 28). To this end, the Special Rapporteur has regularly met with other mechanisms and agencies as described below.

32. During his first year in his office, the Special Rapporteur held a formal meeting with the Board of Trustees of the Voluntary Fund for Victims of Torture. At this meeting, he assured the Board that he would continue his predecessor's support for its work, encourage contributions to its resources and disseminate, as appropriate, information on its work to those that could benefit from the assistance it offers.

33. On 19 May 1998, the Special Rapporteur participated in the first joint meeting with the Committee against Torture and the Voluntary Fund for Victims of Torture, together with the High Commissioner for Human Rights. The other bodies with mandates connected with the question of torture exchanged views and information on how each of them works and the complementary nature of their mandates. The meeting also adopted a statement for 26 June, United Nations International Day in Support of Victims of Torture. Although a joint meeting was not able to be held in 1999, a joint statement was issued on the International Day. The Special Rapporteur believes that it would be valuable to hold such meetings on a periodic basis.

34. While limited resources have made it impossible for the Special Rapporteur to attend on a regular basis the sessions of the Committee against Torture, the Special Rapporteur has met as frequently as possible with the Committee and/or its Chairman. As noted above, he participated in the first joint meeting with the Committee and the Voluntary Fund for Victims of Torture, together with the High Commissioner for Human Rights. Further, in carrying out his mandate, the Special Rapporteur coordinates closely with the Committee to avoid unnecessary duplication.

35. In its resolution 1993/41, entitled "Human rights in the administration of justice", the Commission on Human Rights invited the Commission on Crime Prevention and Criminal Justice to explore ways and means of cooperating with the human rights programme in the field of the administration of justice, with special emphasis on the effective implementation of norms and standards. Mindful of this resolution, the Special Rapporteur accepted an invitation to attend the second session of that Commission, where he stressed the importance of norms and standards adopted in the criminal justice field for his own work. Of particular relevance were the Standard Minimum Rules for the Treatment of Prisoners (1955), the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975) and the Code of Conduct for Law Enforcement Officials (1979). The Special Rapporteur subsequently attended the third session of that Commission in 1994 and the fifth session in 1996.

36. The Special Rapporteur also attended the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo in 1995. At the Congress, he participated in an ancillary meeting organized by Penal Reform International (PRI) on a draft manual prepared by PRI with the aim of making the Standard Minimum Rules for the Treatment of Prisoners more accessible, especially to prison staff.

37. The Special Rapporteur has participated in all six annual meetings of special rapporteurs/representatives, experts and chairpersons of working groups of the Commission on Human Rights and of the advisory services programme. The Special Rapporteur considers these meetings an important opportunity to exchange views with his colleagues to improve coordination between mechanisms, thereby avoiding unnecessary overlap and duplication of work. The Special Rapporteur acted as Rapporteur of the first two meetings and is currently the Chairman of the sixth meeting of special rapporteurs/representatives, experts and chairpersons of working groups.

38. The Special Rapporteur attended the Fourth World Conference on Women, held in Beijing in September 1995, during which he participated in a seminar organized by the Centre for Human Rights. At this seminar, he drew attention to the position taken by the meeting of special rapporteurs on the issue of the integration of women's rights into their work and explained how he had sought to give effect to the policy in his own work. In addition, he was able to attend the United Nations fiftieth anniversary meeting of the International Scientific Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, held in Courmayeur, Italy, in October 1995. Although participating on behalf of the University of Essex

Human Rights Centre, he addressed the gathering on the evolution of the United Nations thematic machinery, with particular reference to his own mandate. On the nomination of the Chairperson of the fifth meeting of special rapporteurs, the Special Rapporteur also attended the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome in June/July 1998. He also attended a round table of the International Institute of Humanitarian Law on the resulting Rome Statute of the International Criminal Court, held in San Remo, Italy, in September 1998. During his tenure, the Special Rapporteur has also attended numerous conferences and seminars organized by non-governmental organizations and academic institutions.

IV. Issues of special concern to the Special Rapporteur

A. Gender-specific forms of torture

39. In paragraph 5 of its resolution 1994/37 the Commission on Human Rights "invite[d] the Special Rapporteur to examine questions concerning torture directed disproportionately or primarily against women and conditions conducive to such torture, and to make appropriate recommendations concerning prevention of gender-specific forms of torture". In his report to the fifty-first session of the Commission on Human Rights, the Special Rapporteur addressed gender-specific forms of torture (E/CN.4/1995/34, paras. 15-24).

B. Violation of the prohibition of torture of children

40. In paragraph 5 of its resolution 1995/37 B the Commission on Human Rights invited the Special Rapporteur to examine questions concerning torture directed primarily against women and children and conditions conducive to such torture and to make appropriate recommendations concerning the prevention of gender specific forms of torture and the torture of children. In his report to the fifty-second session of the Commission on Human Rights, the Special Rapporteur considered the issue of torture and children (E/CN.4/1996/35, paras. 9-17).

C. Corporal punishment

41. In his report to the fifty-third session of the Commission on Human Rights, the Special Rapporteur addressed the issue of corporal punishment (E/CN.4/1997/7, paras. 3-11). He noted in this report that it had been the general practice of the mandate to take up cases involving corporal punishment, usually by means of the urgent appeal method. He further noted, however, that the Government of Saudi Arabia had contested the basis of the Special Rapporteur's concern with corporal punishment and, therefore, he addressed the relationship of the practice to the mandate of the Special Rapporteur in that report.

D. Incommunicado detention

42. In his 1988 report to the Commission on Human Rights at its fifty-fourth session, the Special Rapporteur's predecessor recommended, *inter alia*, that incommunicado detention should be declared illegal (E/CN.4/1988/17). Similarly, in its general comment (16) adopted at its sixteenth session, of 27 July 1982, the Human Rights Committee states: "Among the safeguards which may make control effective are provisions against detention incommunicado, granting, without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainees; provisions requiring that detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives ..."[3] Based upon information received over the course of the past seven years, the Special Rapporteur is of the view that incommunicado detention is the most important determining factor as to whether an individual is at risk of torture. As such, the Special Rapporteur reiterates the recommendation of his predecessor and urges all States to declare incommunicado detention illegal.[4]

E. Torture of human rights defenders

43. In its resolution 1999/66, the Commission on Human Rights urged all treaty bodies and special representatives, special rapporteurs and working groups of the Commission and the Subcommission to give due regard to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144, annex) within their

mandates. Article 12 (2) of the Declaration provides that "[t]he State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration".

44. The Special Rapporteur has continuously received allegations concerning the torture or ill-treatment of human rights defenders. In the latest statistics available to the Special Rapporteur, in the years 1997 and 1998 21 human rights defenders were tortured or ill-treated or at risk of torture or ill-treatment. The repression of human rights defenders has a chilling effect on the promotion and protection of human rights and thus is of grave concern to the Special Rapporteur. In his forthcoming report to the Commission on Human Rights, the Special Rapporteur will address this issue in greater detail.

F. Question of non-refoulement

45. Article 3 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment provides that "[n]o State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."The Human Rights Committee has also stated, in its general comment 20 (44) of 3 April 1992, that "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end."[5]

46. The Special Rapporteur has utilized the urgent appeal mechanisms to intervene in cases where an individual is to be deported, extradited, expelled or returned to another country where he or she is thought to be at risk of torture or ill-treatment. In this regard, the Special Rapporteur wishes to emphasize that he does not request the concerned State not to return the individual, but rather, he calls upon the State to take effective steps to ensure that the individual would not be subjected to such treatment if he or she is indeed returned.

G. Question of impunity

47. Both the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establish an obligation for the State to carry out an impartial investigation, even if there has been no formal complaint, where there is reasonable ground to believe that an act of torture has been committed. Further, States have an obligation to ensure that all acts of torture are offences under its criminal law and that these offences shall be punishable by appropriate penalties. Moreover, any person alleged to have committed such an offence shall be taken into custody or shall have other legal measures taken against him to ensure his presence.

48. The Special Rapporteur is of the view that impunity continues to be the principal cause of the perpetuation and encouragement of human rights violations and, in particular, torture. The Special Rapporteur is in agreement with his colleague, the Special Rapporteur on extrajudicial, summary or arbitrary executions, that even if in exceptional cases Governments may decide that perpetrators should benefit from measures that would exempt them from or limit the extent of their punishment, the obligation of Governments to bring them to justice and hold them formally accountable stands (see A/51/457, para. 120).

H. Compensation and rehabilitation of torture victims

49. Both the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide that a State should ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible.

50. In this regard, the Special Rapporteur calls upon all States to support to the maximum extent possible the United Nations Voluntary Fund for Victims of Torture. Further, all States should support and assist rehabilitation centres that may exist in their territory to ensure that victims of torture are provided the means for as full a rehabilitation as possible.

I. Ratification of or accession to the Convention against Torture

51. There are currently 117 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its annual resolutions on the question of torture, the Commission on Human Rights has continuously called upon all States to become parties to the Convention. Further, it has invited all States ratifying or acceding to the Convention and those States parties that have not yet done so to make the declaration provided for in articles 21 and 22 of the Convention and to avoid making, or consider the possibility of withdrawing, reservations to article 20 (see, for example, resolution 1999/32).

52. The Special Rapporteur joins in this call, noting that ratification of or accession to the Convention demonstrates a State's commitment to eradicating the practice of torture.

J. Manual on the effective investigation of torture

53. During 1999, the Special Rapporteur participated in two meetings concerning the preparation of a manual on effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, the first held in Istanbul, Turkey, from 11 to 13 March 1999 and the second held in Geneva at the Palais Wilson on 9 September 1999. The manual, inspired by the *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*[6] is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and other investigative bodies. While the manual was developed to enable States to address the problem of effective documentation, it is also intended to apply to other contexts including human rights investigations and monitoring by intergovernmental and non-governmental organizations, evaluations of applications for political asylum, the defence of individuals who "confess" to crimes during torture, and needs assessments for the care of torture victims. The conceptualization and preparation of the manual was a collaborative effort between forensic doctors, physicians, psychologists, human rights monitors and lawyers representing 41 organizations or institutions from 15 countries.

54. The manual will include principles on the effective documentation of torture and other cruel, inhuman or degrading treatment or punishment, which would outline minimum standards for States to ensure the effective documentation of torture. The principles have been modelled on the relevant paragraphs of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, annex). These principles have been annexed to the present report.

55. The Special Rapporteur is of the view that the manual will be an important tool for States in carrying out investigations concerning allegations of torture or ill-treatment. Noting that the General Assembly has endorsed the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (resolution 44/162), the Special Rapporteur would recommend that consideration be given similarly to endorsing the Principles on the effective documentation of torture and other cruel, inhuman or degrading treatment or punishment.

K. International Criminal Court

56. The adoption of the Rome Statute of the International Criminal Court (A/CONF.183/9) on 17 July 1998 represents a landmark in international criminal law, including the development of international legal norms prohibiting torture. Article 7 (1) (f) of the Rome Statute lists "torture" among the crimes against humanity. Article 7 (2) (e) of the Statute defines "torture" as:

> "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."

57. Also relevant is article 7 (1) (k) which covers "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

58. Article 8 (2) (a) of the Statute, applicable to situations of international armed conflict, concerns grave breaches of the Geneva Conventions of 12 August 1949 and incorporates the Conventions' language on "torture or inhuman treatment" (ii) and "wilfully causing great suffering, or serious injury to body or health" (iii) in its list of acts coming within the material competence of the Court as a "war crime".

59. The provisions of the Rome Statute concerning war crimes committed in the context of an armed conflict not of an international character are based on article 3 common to the four Geneva Conventions of 12 August 1949 and include, *inter alia*, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as the commission of "outrages upon personal dignity, in particular humiliating and degrading treatment" (art. 8 (2) (c) (i)-(ii)).

V. Concluding remarks and observations

60. Based upon all the information available to him, the Special Rapporteur can only conclude that the phenomenon of torture continues to plague all regions of the world. The Special Rapporteur is of the view that torture can be eradicated only if there is a genuine will on the part of Governments to enforce the safeguards that have been established to prevent acts of torture from occurring. To this end, the Special Rapporteur would recommend the following:

(a) That all States that have not done so ratify or accede to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment; further that all States ratifying or acceding to the Convention and those States parties that have not yet done so make the declaration provided for in articles 21 and 22 of the Convention and avoid making, or consider the possibility of withdrawing, reservations to article 20;

(b) That all States enact the necessary legislation to ensure that all acts of torture are offences under its criminal law, and that these offences are punishable by appropriate penalties which take into account their grave nature;

(c) That all States prohibit incommunicado detention for more than 24 hours or, under special circumstances, 48 hours, and that the safeguards provided in article 9 of the International Covenant on Civil and Political Rights concerning the liberty and security of the person be respected;

(d) That all States ensure that education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

(e) That all States carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction;

(f) That all States institute criminal proceedings where there is sufficient evidence to find that a State agent has committed an act of torture; where such an individual is found guilty of the crime, the punishment should be commensurate with the gravity of the crime;

(g) That all States should ensure that in its legal system the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible;

(h) That all States provide support to the maximum extent possible to the United Nations Voluntary Fund for Victims of Torture;

(i) That all States ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statement was made;

(j) That the General Assembly give consideration to endorsing the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment annexed to the present report.

Notes

[1] Pursuant to resolution 1998/38 of the Commission on Human Rights, the Special Rapporteur presented an oral interim report to the fifty-third session of the General Assembly on 5 November 1998.

[2] With respect to the working methods used by the Special Rapporteur regarding urgent actions, reference should be made to the annex of the Special Rapporteur's report to the fifty-third session of the Commission on Human Rights (E/CN.4/1997/7).

[3] See *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40* (A/37/40), annex V, para. 1.

[4] See also resolutions 1997/38, 1998/37 and 1999/32 of the Commission on Human Rights.

[5] Ibid., *Forty-seventh Session* (A/47/40), annex VI, sect. A, para. 9.

[6] United Nations publication, Sales No. E.91.IV.1.

Annex

Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter torture or other ill-treatment) include the following:

(i) Clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families;

(ii) Identification of measures needed to prevent recurrence;

(iii) Facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

3 (a). The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry.[a] The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

3 (b). Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5 (a). In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.[a]

5 (b). A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6 (a). Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control

of the medical expert and outside the presence of security agents and other government officials.

6 (b). The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(i) Circumstances of the interview: name of the subject and name affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;

(ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should be given;

(v) Authorship: the report should clearly identify those carrying out the examination and should be signed.

6 (c). The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

Notes

[a] Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected.